

**The Pittsburgh & Midway Coal Mining Co.**

A Chevron Company

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July 2, 2001

Minerals Management Service
Minerals Revenue Management
Regulations and FOIA Team
P.O. Box 25165, MS 320B2
Denver, CO 80225-0165

Re: Comments on Proposed Solid Mineral Reporting Requirements
30 C.F.R. Parts 206, 210, 216, & 218

Dear Sir or Madam:

On June 5, 2001, the Department of Interior requested comments on their Minerals Management Service's ("MMS") proposed reporting requirements for solid minerals (66 Fed. Reg. 30121). This letter provides The Pittsburgh & Midway Coal Mining Co.'s ("P&M") comments on the proposed reporting requirements. P&M holds federal coal leases in the states of Alabama, Wyoming, and New Mexico and a Navajo Indian lease in New Mexico.

P&M supports the proposed Form MMS-4430 and the proposed Internet submission. The replacement of the current eight reporting forms by the Form MMS-4430 with its functionality capabilities simplifies the reporting of solid mineral royalties.

However, P&M has significant concerns that the proposed submission of sales summaries (§ 210.202), sales contracts (§ 210.203), facility data (§ 210.204) and additional documents or evidence (§ 210.205) will increase our cost to comply, with less assurance that we are in compliance, compared to the current reporting system. Further, P&M is very concerned that there are no confidentiality provisions for the sales contracts and related documents.

We are concerned because the proposed rule significantly changes the current rules regarding the submission of information to the MMS and goes well beyond the requirements of our leases with the Bureau of Land Management ("BLM"). The proposed rule is changing the current rule's "upon request" concept to "a required" concept, with the lessee responsible for determining the documents and other supplemental information that has to be provided without specific guidance or direction. Our lease agreements with the BLM only require P&M to provide "information and documents that are *reasonably necessary* to verify lessee compliance with the terms and conditions of the lease." Emphasis added.

In addition, P&M is concerned that the proposed rule has deleted the current confidentiality section at § 206.263(d) and that the information required by the rule would not be maintained by the MMS as proprietary information. This is also inconsistent with our lease terms, which provide that all information obtained pursuant to them will be closed to inspection by the public under the Freedom of Information Act.

Except for the one comment on § 210.201(a)(1) addressed below, P&M does not have objection to the implementation of the proposed Form MMS-4430 provisions. However, and as discussed below in P&M's preliminary comments, P&M has pronounced and serious concerns with respect to the remainder of the proposed regulations. In order to be able to fully develop and present those concerns, P&M requests that the comment period be extended for a period of 60 additional days.

P&M's preliminary concerns with the proposed rule are discussed below.

IMPLIES THAT ROYALTY PAYMENT HAS TO BE SUBMITTED AT THE SAME TIME AS FILING MMS FORM-4430

Proposed § 210.201(a)(1) states "you must submit a completed Form MMS-4430 for all coal and other solid minerals produced from Federal and Indian leases ***accompanied by all required royalty and rental payments*** (except for first year rentals)." Emphasis added.

A literal reading of the proposed rule would indicate that a solid mineral lessee has to make his payment for royalty liability on the same day that the Form MMS-4430 is submitted. If this is the intent of the proposed rule, it is a marked departure from the current practice. If insisted upon, lessees will simply not submit their Form MMS-4430 until the last day of the month when they are making their wire transfer payment for the royalty liability. In addition, the proposed rule is in conflict with the current payment procedures for solid minerals in § 218.200 and § 218.201.

P&M recommends that the phrase "accompanied by all required royalty and rental payments (except for first year rentals)" be deleted from the proposed rule.

PROCESSING OR WASHING AND TRANSPORTATION COSTS SUBMISSION IS AMBIGUOUS

Proposed § 210.202(a) includes a table to determine the time frames for submitting sales summaries and the other data elements that the lessee must include. The proposed rule is unclear regarding the cost information to be submitted for data elements 4 (processing or washing costs) and 5 (transportation costs).

Since the table requires the submission of processing or washing costs and transportation costs, are these costs to be submitted monthly pursuant to § 206.259 and § 206.262? If this is the intent of the proposed rule, P&M objects to this information submission requirement because it will significantly increase the cost to comply and some of the cost

data pursuant to those subsections is determined on an annual basis. Also, P&M is concerned that the proposed regulations do not explicitly provide for the filing of a claim for transportation allowances within three months after the end of the calendar year or after the applicable contract or rate terminates or is modified or amended with respect to Indian leases, as presently provided for under §206.461(c).

SUBMISSION OF COAL SIZE DATA ELEMENT IS UNNECESSARY

Proposed § 210.202(a) includes a table to determine the time frames for submitting sales summaries and the other data elements that the lessee must include. The proposed rule requires that the size of coal shipped to each customer be submitted monthly.

P&M objects to having to provide sizing information by customer each month for the following reasons:

1. P&M does not indicate coal size by customer on any current internal report that we prepare. Therefore, we would have to create a new report to submit to the MMS.
2. The MMS will already have the individual customer contracts that detail the coal size requirement.

APPEARS TO REQUIRE SUBMISSION OF SALES SUMMARY INFORMATION FOR MONTHS WHEN THERE IS NO FEDERAL PRODUCTION

Proposed § 210.202(b)(1) states "for leases with ad valorem royalty terms (that is, leases for which royalty due is dependent upon sales value), you must submit your sales summaries monthly at the same time you submit Form MMS 4430." The proposed rule implies that even if you do not have federal production in a month that you are required to submit the sales summaries for that month if you have an ad valorem royalty term lease.

P&M agrees that Form MMS-4430 must be filed even for months when there is no federal production. However, we do not agree that sales summaries should be provided for any month with no federal production. P&M recommends that the following be added to this subsection "** * * Form MMS-4430 reporting federal production. In the event that you did not have federal production in a specific month, you must submit sales summaries only if we specifically request you to do so.*"

SUBMISSION OF SALES CONTRACTS IS AMBIGUOUS

Proposed § 210.203(a) requires the lessee to "submit sales contracts, agreements, contract amendments, or other documents that affect gross proceeds received for the sale of all coal and other solid minerals." The phrase "other documents that affect gross proceeds received for the sale of all coal and other solid minerals" is not defined in the proposed regulation and places an undue burden upon the lessee to determine what other documents must be submitted. Does this include every document received from a third-

party or worksheet created by the lessee to support the amount invoiced (i.e. train manifest with weights, individual shipment quality analysis)? Does this included all the supporting documentation to a price escalation calculated pursuant to the terms of the contract? Does this include all correspondence with each customer?

P&M requests that the phrase "other documents that affect gross proceeds received" be eliminated from the final rule. Elimination of this phrase relieves the lessee of the difficult burden of trying to determine what "other documents" must be submitted. The MMS could request these "other documents" pursuant to P&M's recommended changes to § 210.205(a) of the proposed rule.

SUBMISSION OF SALES CONTRACTS QUARTERLY IS AMBIGUOUS AND BURDENSOME

Proposed § 210.203(b)(1) requires the submission of sales contracts quarterly. The proposed rule implies that a lessee is required to submit a copy of a multi-period contract each quarter. In addition, the proposed rule is ambiguous regarding what is to be submitted quarterly and when the quarterly report is due. For example, are all contracts entered into during the first quarter required to be submitted by March 31st?

P&M believes the proposed rule should be clarified to indicate that a multi-period contract is only submitted once. In addition, since the majority of the coal contracts are prospective, P&M's reporting burden is increased unnecessarily by the requirement to submit contracts quarterly. We believe that submitting contracts semi-annually is more appropriate.

If P&M's proposed change to § 210.203(a) discussed above is accepted, we recommend that § 210.203(b)(1) be revised as follows "*For coal and metal production, you must submit semi-annually any new sales contracts, agreements, and contract amendments entered into during the six month period. The January through June reporting period is due on July 31st and the July through December reporting period is due on January 31st of the following year.*"

In addition the quarterly requirement in § 210.10(c)(20) should be changed to semi-annually.

APPEARS TO REQUIRE SUBMISSION OF FACILITY DATA FOR MONTHS WHEN THERE IS NO FEDERAL PRODUCTION

Proposed § 210.204(a)(1) states "if you operate a wash plant, refining, ore concentration, or other processing facility for any coal, sodium, potassium, metals, or other solid minerals produced from Federal or Indian leases with ad valorem royalty terms, you must submit facility data, regardless of whether the facility is located on or off lease." The proposed rule implies that even if you do not have federal production in a month that you are required to submit the facility data for that month if you have an ad valorem royalty term lease.

P&M does not agree that facility data should be provided for any month with no federal production. P&M recommends that the following be added to § 210.204(a)(2) “* * * Form MMS-4430 *reporting federal production. In the event that you did not have federal production in a specific month, you must submit facility data only if we specifically request you to do so*”

§ 210.205(a) REQUIREMENTS EXCEED THE CURRENT FEDERAL AND INDIAN LEASE TERMS

Proposed § 210.205(a) allows the MMS “to request detailed statements, documents, or other evidence that supports our compliance and asset management responsibilities.” The proposed rule violates P&M’s contractual rights with the BLM. Our leases state that “[lessee] shall allow lessor access to and copying of documents reasonably necessary to verify [lessee] compliance with terms and conditions of the lease.” Under the lease terms, P&M is only required to provide documentation to determine the compliance with the terms and conditions of the lease and not to provide information to the MMS to support their compliance and asset management responsibilities.

Current § 206.250(b) provides that if the specific provisions of any lease are inconsistent with any MMS regulation, the lease provision shall govern to the extent of that inconsistency.

P&M recommends that the proposed § 210.205(a) be revised as follows “*The MMS may request other information and documents that are reasonably necessary to verify lessee compliance with the terms and conditions of the lease.*”

REFERENCES TO MAILING ADDRESSES SHOULD BE DELETED

The proposed rule contains numerous subsections regarding where to mail reports and other information when they are not submitted electronically.

Since mailing addresses do change, P&M believes that all references to mailing addresses should be deleted from the proposed rule. If the mailing addresses are not deleted, the rule will have to be amended in the future when the mailing address does change.

P&M recommends that all subsections containing mailing addresses references should be revised as follows “*Instructions for submitting * * * * by U.S. Postal Service mail service or by courier service are available on our Internet web site or you may contact us toll free at 1 888 201 6116.*”

CONFIDENTIALITY

The proposed regulation deletes the current confidentiality provisions at § 206.263(d) and therefore the proposed regulation does not have a confidentiality section for the information required to be submitted.

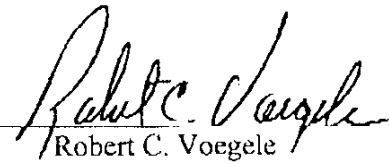
P&M recommends that a confidentiality section be added as § 210.206 that reads as follows "*Information obtained under this Part 210 shall be closed to inspection by the public in accordance with the Freedom of Information Act (5 U.S.C. 552).*"

We thank you for this opportunity to comment on the proposed regulations.

Respectfully submitted,

THE PITTBURG & MIDWAY COAL MINING CO.

By


Robert C. Voegelé

Title: Manager of Accounting